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4 In re)
5)
6 CUSTOMS AND TAX ADMINISTRATION) MASTER DOCKET
7 OF THE KINGDOM OF DENMARK) 18-MD-2865 (LAK)
8 (SKATTEFORVALTNINGEN) TAX)
9 REFUND SCHEME LITIGATION)
10)
11 This document relates)
12 To: All cases)
13)

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25 Reported by: FREDERICK WEISS, CSR, CM

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10:09:18 1 of DC.
10:09:18 2 At this time, will the reporter,
10:09:20 3 Frederick Weiss, on behalf of Gregory Edwards LLC,
10:09:24 4 please swear in the interpreter and the witness.

5 WHEREUPON --

6 KIRSTEN FOLLIN, INTERPRETER
7 Affirmed that she would translate, to the best of
8 her knowledge and ability from the English
9 language to the Danish language and from the
10 Danish language to the English language.

11

10:08:50 12 LISBETH ROMER,
10:08:50 13 Called as a Witness herein by counsel for
10:08:50 14 Defendant Azalea, et al., having been first duly
10:08:50 15 sworn, was examined and testified as follows:

10:10:11 16 EXAMINATION

10:10:11 17 BY MS. McCARTHY:

10:10:12 18 Q. Good morning, Ms. Romer.
10:10:14 19 A. Good morning.
10:10:14 20 Q. My name is Sharon McCarthy and I
10:10:17 21 will be asking you questions on behalf of the
10:10:19 22 defendants in this litigation today.

10:10:29 23 You understand English, correct?
10:10:32 24 A. Yes.
10:10:32 25 Q. Are you comfortable answering my

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10:32:55 1 you are saying there. We have many notes and
10:32:58 2 memos and reports that you made, and we are going
10:33:02 3 to go through that. But I just want to hear from
10:33:04 4 you now, what was the concern that you had about
10:33:11 5 dividend -- payments of dividends reclaims to
10:33:19 6 investors?

10:33:19 7 MR. WEINSTEIN: Objection to form.

10:33:29 8 BY MS. MCCARTHY:

10:33:29 9 Q. You may answer.

10:33:33 10 (Interpreter Translating.)

10:33:36 11 A. Okay. We had a system that was
10:33:41 12 actually quite well because we were having third
10:33:50 13 parties certify the claim. And at least in
10:33:57 14 Denmark, we are dependent very much on information
10:34:03 15 from the banks, and they are dealing with a lot of
10:34:06 16 things that we all depend on.

10:34:09 17 So having this third party sort of
10:34:18 18 certify by the dividend invoice that we want with
10:34:23 19 the claim for refund, we thought we were quite
10:34:27 20 well.

10:34:28 21 But in many of our systems, we have
10:34:33 22 a possibility of seeing somewhere if everything is
10:34:39 23 correct. And that was not possible because you
10:34:47 24 don't know.

10:34:47 25 Q. You don't know who the shareholder

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12:20:16 1 BY MS. MCCARTHY:

12:20:16 2 Q. Is -- and I was asking you if that

12:20:19 3 constituted then a gap in information to SKAT?

12:20:26 4 A. But it was as it had always been.

12:20:30 5 It was as it has always been. Since the system

12:20:35 6 was put in place in the '80s, we didn't have any

12:20:39 7 information about shareholders not having a depot

12:20:42 8 in Denmark.

12:20:43 9 Q. Okay. So that was something

12:20:45 10 that -- that if SKAT then received a reclaim

12:20:50 11 application by a foreign shareholder without a

12:20:53 12 Danish bank account, how could you verify their --

12:20:58 13 that that shareholder received a dividend?

12:21:02 14 A. I could only verify it by his claim

12:21:05 15 and by the invoice from the bank telling that he

12:21:09 16 had received that amount of dividend.

12:21:12 17 Q. Okay.

12:21:13 18 MS. MCCARTHY: So if we could go to

12:21:16 19 Exhibit 3051, if you could mark that,

12:21:22 20 Mr. Reporter.

12:22:03 21 3051 should be a form, Claim to

12:22:08 22 Relief from Danish dividend Tax.

12:22:09 23 Oh, I'm so sorry, it's 3016. I

12:22:11 24 apologize. I know, I sent you to -- I sent you to

12:22:14 25 a very big document. I meant to send you to a

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02:14:01 1 A. And then the VP, that is a private
02:14:05 2 organization, they have to have at least half a
02:14:08 3 year to implement changes in their systems. So...
02:14:15 4 Q. Okay. Do you remember which
02:14:17 5 portions of this document you personally drafted?
02:14:21 6 A. I can tell you I have been involved
02:14:26 7 in all the subjects here.
02:14:27 8 Q. You have been involved in drafting
02:14:31 9 of them?
02:14:31 10 A. Yes. Yes.
02:14:31 11 Q. Okay. And if could look at the
02:14:37 12 very first page under "Problem." I believe that
02:14:49 13 this is describing the same problem we've been
02:14:53 14 discussing about the timing of the receipt, of the
02:14:58 15 reclaims versus the timing of the receipt of
02:15:01 16 information from the companies, correct?
02:15:03 17 A. Yes.
02:15:03 18 Q. And as you will see in the middle
02:15:06 19 of the bottom paragraph there, it says: "That
02:15:08 20 means that today the dividend tax administration
02:15:11 21 today is to a large extent administered blindly.
02:15:15 22 As the information on the actual distribution is
02:15:17 23 not known at the time, the administration conducts
02:15:20 24 its business operations. This is the case, for
02:15:24 25 example, with recovery of dividend tax under the

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02:15:27 1 double-taxation agreements and with dividend tax
02:15:31 2 refunds, et cetera, just as a reconciliation of
02:15:34 3 the actual distributed amount with the
02:15:38 4 distributing company's declaration and tax return
02:15:41 5 is not possible until a much later point in time."

02:15:46 6 Do you remember that issue?

02:15:47 7 A. Yes.

02:15:48 8 Q. Okay. And is it -- this is number
02:15:50 9 1.1 of the problem catalog?

02:15:53 10 A. Yes.

02:15:53 11 Q. Is this a very important issue?

02:15:57 12 A. It is the most important issue
02:16:02 13 within the Danish administration of the companies
02:16:07 14 for the Danish taxation purposes that we should
02:16:11 15 have the -- and it is unnecessary that it was not
02:16:17 16 given on the same time.

02:16:21 17 I have always said that paying out
02:16:24 18 dividend is the one thing to do. But
02:16:28 19 unfortunately, when we started with dividend tax
02:16:31 20 in Denmark, we put the dividend tax in so the
02:16:37 21 interest system that runs throughout the year, so
02:16:40 22 you can only put in a result at the end of the
02:16:46 23 year, and that is why we had to have the
02:16:49 24 declaration with the money that we want that once
02:16:53 25 and the information about the receiver of dividend

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02:16:58 1 after the 1st of January.

02:17:01 2 Q. And that's what you wanted to

02:17:02 3 change?

02:17:02 4 A. That's what I wanted to change. I

02:17:04 5 wanted to be at the same time.

02:17:09 6 Q. And were you hearing from the banks

02:17:11 7 that that was too difficult to do?

02:17:12 8 A. Yes. They said they had to tally

02:17:25 9 things. They had to see --

02:17:25 10 (Court reporter clarification.)

02:17:25 11 THE INTERPRETER: T-A-L-L-Y, tally.

02:17:25 12 THE WITNESS:

02:17:28 13 A. They said they had to secure that

02:17:29 14 everything was all right.

02:17:31 15 But they had already paid out the

02:17:33 16 dividend. So to me, that was not clear talk.

02:17:37 17 BY MS. McCARTHY:

02:17:37 18 Q. Okay. And ultimately, were you

02:17:42 19 able to get that problem addressed?

02:17:44 20 A. In '12.

02:17:48 21 Q. 2012?

02:17:49 22 A. Yes.

02:17:49 23 Q. So it took six years -- more than

02:17:54 24 six years, because you were raising this issue

02:17:57 25 earlier, correct?

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03:33:55 1 shareholder in the company in question or whether
03:33:58 2 the investor in question isn't that liable for tax
03:34:01 3 in the foreign country. The form is reviewed by
03:34:05 4 accounting to detect whether all the information
03:34:07 5 is included. The refund is then paid."

03:34:11 6 Is that accurate what that says?

03:34:13 7 A. Yes. Because when we get the
03:34:19 8 declaration and the invoice, that is the
03:34:24 9 information that we can have.

03:34:26 10 Q. And when you say "the invoice," are
03:34:28 11 you talking about --

03:34:29 12 A. The bank note.

03:34:31 13 Q. The bank note or something from a
03:34:33 14 custodian, correct?

03:34:34 15 A. Yes.

03:34:34 16 Q. Indicating that the shares --

03:34:38 17 A. They had received the dividend of
03:34:40 18 these shares.

03:34:40 19 Q. All right. Okay. And then it
03:34:45 20 talks, two paragraphs down, about omnibus and
03:34:49 21 nominee accounts indicating -- meaning that real
03:34:52 22 owners of the shares are not known so refunds are
03:34:55 23 paid without proof of ownership and actual
03:34:57 24 distribution, right?

03:34:58 25 A. Yes.

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05:02:29 1 was conducted?

05:02:30 2 A. No. Because we never talked about

05:02:34 3 it while I was there because we hadn't discovered

05:02:40 4 it.

05:02:40 5 Q. In 2012 or 2013, did you ever

05:02:46 6 believe that there were fraudulent reclaim

05:02:48 7 applications being submitted?

05:02:49 8 A. No.

05:02:50 9 Q. Did anyone bring to your attention

05:02:52 10 that they believed that there were fraudulent

05:02:55 11 reclaim applications in 2012 --

05:02:57 12 A. No.

05:02:57 13 Q. -- or 2013?

05:02:59 14 A. No.

05:02:59 15 Q. Do you know the details of how the

05:03:02 16 defendants in this case purchased the Danish

05:03:05 17 shares that they claimed to own?

05:03:07 18 A. No.

05:03:08 19 Q. If SKAT had called the third-party

05:03:12 20 banks that submitted those certifications for the

05:03:14 21 reclaims in this case, do you know what

05:03:17 22 documentation, if any, those banks would have

05:03:20 23 provided to SKAT?

05:03:21 24 A. No. I can only say by experience

05:03:24 25 that when we went to the banks to have some extra

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05:09:18 13 Q. Okay. You have testified today
05:09:32 14 about a number of issues that you raised over time
05:09:36 15 that you thought -- where there could be
05:09:40 16 improvement in the administration of dividend tax,
05:09:43 17 correct?
05:09:43 18 A. Yes.
05:09:43 19 Q. And did SKAT implement changes over
05:09:46 20 time to address any of the issues that you raised?
05:09:49 21 A. Fortunately, yes.
05:09:49 22 Q. Okay. So I want to just talk about
05:09:52 23 a number of them and you can -- we'll talk about
05:09:56 24 whether SKAT implemented the changes.
05:09:59 25 You mentioned that in the early

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05:10:03 1 2000s, after SKAT had put the 3S system into
05:10:09 2 place, they then changed for the SAP system for
05:10:13 3 dividend tax, right?

05:10:14 4 A. Yes.

05:10:15 5 Q. And you did not think that that was
05:10:17 6 a good idea?

05:10:19 7 A. That was not a good idea.

05:10:20 8 Q. All right. And did you recommend
05:10:21 9 that they go back?

05:10:22 10 A. Yes.

05:10:22 11 Q. Did SKAT go back and implement 3S
05:10:27 12 for dividend tax?

05:10:28 13 A. Fortunately, we had two years of
05:10:31 14 hell from SAP and then from 2006, we got 3S back.

05:10:37 15 Q. Okay. That was a system that you
05:10:38 16 felt was good for dividend tax administration?

05:10:41 17 A. It was developed for dividend tax.
05:10:43 18 It was part of the company tax system and the
05:10:49 19 special branch for dividend tax.

05:10:52 20 Q. Okay. You mentioned as well that
05:10:57 21 you had suggested a change to the reclaim form
05:11:00 22 that people put in to get a refund; is that right?

05:11:04 23 A. Yes.

05:11:04 24 Q. And did your requested change to
05:11:07 25 the form take place?

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05:11:09 1 A. I am sorry. I didn't catch it.

05:11:11 2 Q. Yeah. Did your recommendation to

05:11:13 3 change the form, was that implemented?

05:11:15 4 A. Yes.

05:11:15 5 Q. A number of the documents we saw

05:11:20 6 today, your memos, reference that SKAT was unable

05:11:25 7 to perform a reconciliation --

05:11:26 8 A. Yes.

05:11:27 9 Q. -- between a company's declaration

05:11:30 10 of dividend and then ultimately the report on the

05:11:33 11 dividend recipients?

05:11:34 12 A. Yes.

05:11:34 13 Q. Can you explain what the issue

05:11:38 14 there was that you couldn't reconcile?

05:11:40 15 A. The issue was that the declaration

05:11:45 16 went into one system, and the recipients --

05:11:52 17 recipients went into the final tax return system

05:11:59 18 where you had the tax paid under amount already --

05:12:13 19 taken as already paid tax.

05:12:14 20 So you had that tax payment already

05:12:18 21 on your tax return. But on your declaration, you

05:12:23 22 could have written otherwise. So you would have

05:12:26 23 paid less, but you would get more refund than you

05:12:31 24 had paid because the two systems were not -- that

05:12:33 25 was not fully listed companies. It was for the

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05:12:37 1 small companies.

05:12:37 2 Q. Okay. So the reconciliation issues

05:12:41 3 you were raising as a concern had to do with the

05:12:44 4 small nonlisted companies?

05:12:45 5 A. Yes.

05:12:45 6 Q. Okay. And when you refer to "the

05:12:48 7 declaration," is that the declaration submitted by

05:12:52 8 the company itself that it has paid out a

05:12:53 9 dividend?

05:12:54 10 A. That's a declaration telling there

05:12:56 11 has been a dividend decided, yes.

05:12:58 12 Q. Okay. And that, when submitted to

05:13:00 13 SKAT, that went into one particular system?

05:13:04 14 A. Yes.

05:13:04 15 Q. Okay. And then what's the other

05:13:07 16 report that you were talking about that went into

05:13:08 17 a different system?

05:13:09 18 A. That is when they tell who is the

05:13:11 19 recipient.

05:13:12 20 Q. Okay.

05:13:13 21 A. And there was this time difference

05:13:15 22 that just after the general assembly, you have to

05:13:18 23 send in the declaration with the amount of

05:13:22 24 dividend, and the other one was only submitted

05:13:28 25 17th of January.

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05:13:29 1 Q. Okay. So the two things you are
05:13:31 2 talking about that were put into two different
05:13:33 3 systems are both reports from the company itself?
05:13:36 4 A. Yes.
05:13:36 5 Q. Okay. Was that issue resolved?
05:13:42 6 A. Yes, fortunately.
05:13:43 7 Q. How was that issue resolved?
05:13:46 8 A. First of all, we got the system
05:13:50 9 opened. That was before we had TastSelv. We got
05:13:55 10 the system opened. So it was possible for the
05:13:58 11 company to make those declarations at the same
05:14:01 12 time because we told them, "Why send one and then
05:14:05 13 you have to look it all up again? Now you have
05:14:09 14 everything in front of you. Do both and
05:14:11 15 finished."
05:14:11 16 We also had a lot of companies who
05:14:14 17 forgot to put in the last one because they thought
05:14:17 18 they had already done the declaration.

05:14:19 19 So it was not an easy system. But
05:14:23 20 all was solved when we got our TastSelv that for
05:14:31 21 small companies was started in '12, and where had
05:14:36 22 at the same time for the declaration and the
05:14:40 23 recipient of the dividend. It was turned a little
05:14:45 24 around. So actually, the result of the recipient
05:14:50 25 was the declaration.

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05:14:51 1 Q. Okay. So originally, a company
05:14:54 2 would report the dividend it declared sometimes
05:14:58 3 shortly after the general assembly date?

05:15:00 4 A. Should be the month -- the
05:15:03 5 following month, end of the following month, you
05:15:06 6 should put in the declaration, and you should pay.

05:15:08 7 Q. Okay. And then the separate report
05:15:11 8 where they report who the dividend recipients are,
05:15:15 9 that was done --

05:15:15 10 A. In January.

05:15:16 11 Q. -- January the following year?

05:15:17 12 A. Yes.

05:15:18 13 Q. And input into a different system
05:15:20 14 at SKAT.

05:15:21 15 A. Yes.

05:15:21 16 Q. And you mentioned at some point
05:15:23 17 today that the systems didn't -- you didn't match,
05:15:27 18 they couldn't match. What did you mean by that?

05:15:29 19 A. That they were never talking
05:15:30 20 together.

05:15:30 21 Q. Okay. So you are talking about the
05:15:32 22 two systems within SKAT couldn't -- they were not
05:15:34 23 compatible?

05:15:35 24 A. We had so many systems --

05:15:37 25 Q. Okay.

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05:15:37 1 A. -- and they were not compatible.
05:15:38 2 Q. So the dividend declaration form
05:15:43 3 and the later report on dividend recipients, the
05:15:46 4 two systems were not comparing?
05:15:48 5 A. No.
05:15:49 6 Q. So you couldn't reconcile the two
05:15:52 7 against the other. The timing lag, that was
05:15:53 8 addressed, correct?
05:15:53 9 A. Yes.
05:15:54 10 Q. All right. And did that require a
05:15:55 11 change in the actual law to get that passed?
05:15:57 12 A. Yes.
05:15:58 13 Q. And I think you mentioned that that
05:16:04 14 was implemented in two stages?
05:16:05 15 A. Yeah. The first stage was for
05:16:08 16 small companies, and the second was for the listed
05:16:11 17 companies because VP Securities was this private
05:16:18 18 company, and they should have at least half a
05:16:21 19 year, half a year's notice to settle their systems
05:16:25 20 to be according to the new rules.
05:16:28 21 Q. Okay. So the reason why the second
05:16:31 22 stage was later was just because VP Securities
05:16:33 23 needed to change their system?
05:16:34 24 A. Yes.
05:16:35 25 Q. All right. And so as a result of

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05:16:37 1 the change in the law and the use of TastSelv, was
05:16:43 2 reconciliation between those two reports a
05:16:46 3 problem?

05:16:47 4 A. It was solved because there was no
05:16:48 5 problem.

05:16:48 6 Q. Okay. You mentioned that
05:16:59 7 originally when you started in this area, SKAT had
05:17:02 8 30 days in which to process and pay under a refund
05:17:06 9 application?

05:17:07 10 A. Yes.

05:17:07 11 Q. I think you mentioned that that
05:17:09 12 changed as well?

05:17:10 13 A. That changed as well to a half a
05:17:11 14 year.

05:17:11 15 Q. And was that -- that original
05:17:13 16 deadline of 30 days, was that a problem that you
05:17:16 17 raised with people?

05:17:16 18 A. Yes.

05:17:16 19 Q. All right. And it was changed to a
05:17:18 20 six-month deadline?

05:17:19 21 A. Yes.

05:17:19 22 Q. Did that require -- was that
05:17:21 23 something SKAT could just change in the systems or
05:17:24 24 did that require something bigger?

05:17:26 25 A. I don't recall whether it was a law

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05:17:28 1 or this executive --
05:17:31 2 THE INTERPRETER: Order.
05:17:32 3 THE WITNESS: -- order.
05:17:34 4 BY MR. WEINSTEIN:
05:17:34 5 Q. So that change required either an
05:17:35 6 executive order or a change in the actual law?
05:17:37 7 A. Yes.
05:17:38 8 Q. Okay. I am going to get to the
05:17:49 9 issue of the foreign ownership of shares in a
05:17:53 10 moment. But other than that issue, all the other
05:17:56 11 issues that you had raised that we discussed
05:17:58 12 today, were those the ones I just mentioned that
05:18:01 13 were addressed over time?
05:18:02 14 A. Yes.
05:18:03 15 MS. MCCARTHY: Objection.
05:18:05 16 BY MR. WEINSTEIN:
05:18:07 17 Q. With respect to the foreign
05:18:10 18 ownership of shares, was there a source of
05:18:18 19 information that SKAT could go to to get a listing
05:18:22 20 of the foreign shareholders of the Danish
05:18:25 21 companies?
05:18:25 22 A. No, not if they had their shares in
05:18:31 23 the omnibus or nominee depot.
05:18:34 24 Q. Okay. And was it your
05:18:35 25 understanding that it common practice around the

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05:18:37 1 globe that for a shareholder who held shares in a
05:18:40 2 foreign country, that they would typically be in
05:18:42 3 an omnibus account?

05:18:45 4 A. Yes, because that was the cheapest
05:18:47 5 for the shareholder of course.

05:18:49 6 Q. And so that was -- the -- the issue
05:18:50 7 of foreign shareholders having shares in omnibus
05:18:55 8 accounts was not -- that was not unique to
05:18:58 9 Denmark?

05:18:59 10 A. Not at all.

05:18:59 11 Q. That was just how the global
05:19:01 12 securities worked?

05:19:02 13 A. That was the global securities.

05:19:04 14 Q. All right. Did VP Securities have
05:19:07 15 that information for who the foreign shareholders
05:19:09 16 were of the Danish company if it was an omnibus
05:19:13 17 account?

05:19:13 18 A. No.

05:19:14 19 Q. Did the companies themselves, the
05:19:16 20 Danish companies have lists of the foreign
05:19:19 21 shareholders if they were an omnibus account?

05:19:21 22 A. They normally did not have a list
05:19:24 23 of shareholders because it was all under
05:19:26 24 VP Securities. So they didn't have lists.

05:19:28 25 Q. Okay. They didn't have something

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05:19:30 1 other than what VP Securities has?

05:19:34 2 A. No.

05:19:34 3 Q. So SKAT couldn't go to Maersk, for

05:19:38 4 example, and say, "Just give me your list of

05:19:40 5 foreign shareholders"?

05:19:42 6 A. No.

05:19:42 7 Q. Is there any central repository

05:19:45 8 anywhere in the world that you know of that has

05:19:46 9 that information that SKAT could have accessed?

05:19:49 10 A. No. I have never heard about it.

05:19:50 11 Q. Was there some kind of IT system

05:19:53 12 that SKAT could have put into place that would

05:19:55 13 have had that information?

05:19:56 14 A. Not that I know of.

05:19:58 15 Q. Okay. You talked about the Trace

05:20:03 16 Project with the OECD.

05:20:06 17 What is the OECD?

05:20:08 18 A. The OECD is a worldwide economic

05:20:15 19 organization where they try to solve common

05:20:19 20 problems for the countries, mainly economic

05:20:27 21 problems of course. And they are representing

05:20:34 22 more than 100 countries or something like that.

05:20:37 23 And in that organization, they try

05:20:41 24 to solve the problem of the unknown shareholder.

05:20:49 25 And with not so much success as